

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2, the Utilities Board (Board) gives notice that on August 25, 2017, the Board issued an “Order Adopting Amendments” in Docket No. RMU-2016-0002, In re: Review of Organization and Operation [199 IAC 1], to update and streamline Chapter 1 of the Board’s rules.

Notice of Intended Action was published in the March 1, 2017, Iowa Administrative Bulletin as **ARC 2957C**. The Office of Consumer Advocate, a division of the Iowa Department of Justice, and the Iowa Communications Alliance filed comments and reply comments. The adopted amendments are identical to those published under the Notice of Intended Action.

The order approving this Adopted and Filed rule making can be found on the Board’s Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0002.

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on jobs in Iowa.

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 199—1.3(17A,474,476,78GA,HF2206) as follows:

199—1.3(17A,474,476,78GA,HF2206) Waivers. In response to a request, ~~or on its own motion~~, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. to 4. No change.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if they have not already been provided to the board in another pleading. The waiver request must also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.

The waiver shall describe its precise scope and operative period. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

~~This rule is intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.~~

ITEM 2. Amend rule 199—1.4(17A,474) as follows:

199—1.4(17A,474) Duties of the board. The utilities board regulates electric, gas, telephone, ~~telegraph~~, and water utilities; and ~~pipelines and underground gas storage~~ certain sanitary sewer and storm water drainage facilities. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; certification of electric power generators pursuant to chapter 476A; construction and safety of electric transmission lines pursuant to chapter 478; and the construction and operation of pipelines and underground ~~gas or hazardous liquid~~ storage pursuant to chapters 479, 479A and 479B.

ITEM 3. Amend rule 199—1.5(17A,474), introductory paragraph, as follows:

199—1.5(17A,474) Organization. The ~~utilities division board~~ consists of the three-member board, the ~~office of the executive secretary, which heads the technical and administrative staff, and the office of~~ general counsel.

ITEM 4. Rescind and reserve subrules **1.5(2)** and **1.5(3)**.

ITEM 5. Amend subrule 1.8(1) as follows:

1.8(1) Communications. All communications to the board ~~shall, other than those filed through the~~ board's electronic filing system, may be addressed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, unless otherwise specifically directed. Pleadings and other papers required to be filed with the board shall be filed ~~in the office of the executive secretary of the board~~ within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt and acceptance at the office of the board.

ITEM 6. Rescind and reserve subrule **1.8(3)**.

ITEM 7. Amend subrule 1.9(1) as follows:

1.9(1) Public information. Any interested person may examine all public records of the board by written request or in person at the ~~offices of the board offices~~. Public records ~~shall~~ may be examined ~~only at the board office only during the board's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays.~~ Public records in docketed matters may be examined at any time using the board's electronic filing system. Unless otherwise provided by law, all public records, other than confidential records, maintained by the board shall be made available for public inspection.

ITEM 8. Amend subrule **1.9(2)**, definition of "Personally identifiable information," as follows:

"Personally identifiable information." Information about or pertaining to an individual, specifically including the following unique identifiers when combined with an individual's name: social security number or a financial account number (checking, savings, or share account number or credit, debit, or charge card number). ~~This "Personally identifiable information" does not include information pertaining to corporations.~~

ITEM 9. Rescind and reserve subrules **1.9(3)** and **1.9(4)**.

ITEM 10. Amend subrules 1.9(5) to 1.9(8) as follows:

1.9(5) Records not routinely available for public inspection. The following records are not routinely available for public inspection. The records are listed in this subrule by category, according to the statutory basis for withholding them from inspection.

a. Materials that are specifically exempted from disclosure by statute and which the board may in its discretion withhold from public inspection. Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under subparagraphs 1.9(5) "a"(1) and 1.9(5) "a"(3), the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. Records the ~~commission board~~ is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:

(1) to (5) No change.

(6) Materials exempted from public inspection under any other provisions of ~~state~~ law.

b. Materials that are specifically exempted from disclosure by statute and which the board is prohibited from making available for public inspection. The board is required to withhold the following materials from public inspection:

(1) Tax records submitted to the board and required by it in the execution of its duties shall be held confidential. Iowa Code section 422.20.

(2) Reserved.

c. Materials exempted pursuant to requests deemed granted by the board. Requests to withhold from public inspection the materials and information listed in the subparagraphs below are deemed granted by the board pursuant to Iowa Code section 22.7(3) or 22.7(6), or both sections, provided that the confidential portions of the filings are identified as confidential and filed as provided in 199—14.12(17A,476) and an attorney for the company or corporate officer avers that the material or information satisfies the requirements in Iowa Code section 22.7(3) or 22.7(6), or both sections. The material or information filed pursuant to this paragraph will be deemed confidential upon the filer's receipt of a notice of electronic filing without further review or acknowledgement by the board, and the material or information shall be withheld from public inspection subject to the provisions of subparagraph 1.9(8) "b"(3).

(1) to (16) No change.

(17) The financial records, number of customers, and volumes filed by competitive natural gas providers in each company's annual report. The aggregate total sales volume is not granted confidential treatment by this subparagraph.

(18) The financial information regarding affiliate transactions required for rate-regulated utilities. This information is subject to staff and legal review to ensure the information protected is similar to other information included in this subparagraph.

1.9(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements. In addition, parties are required to redact protected information as defined in Iowa R. Elec. P. 16.602 and 16.603.

a. Procedure. The materials to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the materials to which the request applies shall be clearly marked confidential.

b. Content of request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs "a" and "b" of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the ~~documents~~ information to determine whether the ~~documents~~ information should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the ~~documents~~ information will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the information confidential.

1.9(7) *Procedures for the physical inspection of ~~commission~~ board records which are routinely available for public inspection.* The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. Search fees. An hourly fee ~~will~~ may be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. to d. No change.

1.9(8) Procedures for the inspection of board records which are not routinely available for public inspection. Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. Content of request. The records must be reasonably described by the person requesting them, so as to permit their location by staff personnel. Requests shall be directed to the executive secretary of the board.

b. Procedure. Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be ~~deleted~~ redacted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under 1.9(5) "a"(1), 1.9(5) "a"(3), and 1.9(5) "c," the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection. Requests to review materials not routinely available for public inspection under any other category of paragraph 1.9(5) "a" will be acted upon by the board. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

ITEM 11. Amend subrule 1.9(12) as follows:

1.9(12) Data processing system. ~~The~~ As required by Iowa Code section 22.11(1) "g," the board does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.